THE HON'BLE SRI JUSTICE C.V. RAMULU

Thursday, 4th day of October,2007

W.P.No.10176 of 2005

Between:-

Visakhapatnam Cooperative Central
Stores (Super Bazar), Visakhapatnam,
rep. by its Managing Director
Sri M.S.N. Murthy & another … Petitioners

and

The Chairman-cum-Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Visakhapatnam and others … Respondents

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W.P.No.10176 of 2005

ORAL ORDER:

This Writ Petition is filed seeking a Prohibition restraining the 1st respondent/Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Visakhapatnam from proceeding with the case in M.P.No.9 of 2005 and to declare that the entertaining of the said M.P. is totally without jurisdiction.

The facts are not much in dispute. It appears, respondents 2 to 28 herein have filed M.P.No.9 of 2005 before the Industrial Tribunal-cum-Labour Court, Visakhapatnam under Section 33-C(2) of the Industrial Disputes Act,1947 (for short 'the Act') claiming an amount of Rs.13,38,921/- towards wages and Rs.2,47,700/- towards interest at 6% per annum from 1-7-2001 to 31-7-2004 and also subsequent wages and interest from 1-8-2004 till the amounts are actually paid. It was their claim that they have been working in the Visakhapatnam Cooperative Central Stores (Super Bazar), Visakhapatnam right from its inception and toiling every nerve of them, day-in and day-out, dawn to dusk, more or less 12 hours a day, under agreements for the last 14 to 15 years, while the last agreement being from 1998-2000. Thereafter, there was neither cessation of work nor any fresh agreement was entered into nor the agreement of 1998-2000 was terminated. The work is perennial and also an uninterrupted one.

They are piece rated workmen with minimum guaranteed wages per month. They were also brought under the Provident Fund scheme. Further, one Tarlada Ramulu, respondent No.19 herein, superannuated and was granted monthly pension owing to the decision of the Managing Director. However, in derogation of law, respondents 3 to 28 herein were paid less wages than what was agreed upon. Respondents 3 to 28 with the help of the then Union, which espoused their cause, earlier filed M.P.No.18 of 2001 on the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam and the Tribunal had granted the relief in their favour vide orders dated 27-1-2004 with a specific finding in the operative portion of the Order that respondents 3 to 28 herein can approach the same Court for further claims in respect of subsequent wages and, therefore, the present application claiming wages from 1-7-2001 to 31-7-2004 (36 months) was filed. A calculation memo to this effect was also filed. Aggrieved by the same, the present Writ Petition has been filed by the Visakhapatnam Cooperative Central Stores (Super Bazar), Visakhapatnam and another.

Learned counsel for the petitioners strenuously contended that the claim in M.P.No.9 of 2005 purportedly under Section 33-C(2) Act is misconceived and the Labour Court has no jurisdiction to entertain such a petition. The provisions of Section 33-C(2) of the Act are not applicable to the case on hand. There is no employer and employee relationship between the petitioners and respondents 3 to 28. Respondents 3 to 28 are governed by the provisions of the Andhra Pradesh Muttah, Jattu, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act,1976 (Act No.61 of 1976) a special enactment regulating the working conditions of such workers and they cannot be called as workmen as defined under Section 2(s) of the Act.

In fact, under Act No.61 of 1976, a special provision in Section 19 was made for claiming wages stating that notwithstanding anything contained in the Payment of Wages Act,1936, the Government may, by notification, direct that all or any of the provisions of the said Act or the Rules made thereunder shall apply to all or any class of unprotected workers employed in any scheduled employment to which the said Act applies. Further, as per the provisions of Section 21 of Act 61 of 1976, the unprotected workmen employed in any scheduled employment are entitled for all rights or privileges under any other law, contract, custom or usage applicable to such workers, if such rights or privileges are more favourable than those to which they would be entitled under the Act. This, in fact, impliedly excludes application of the provisions of I.D.Act to the workers covered by of Act 61 of 1976.

Learned counsel for respondents 2 to 28 strenuously contended that a petition under Section 33-C(2) of the Act is maintainable, since Visakhapatnam Cooperative Central Stores (Super Bazar) is an industry and respondents 3 to 28 are workmen. In fact, earlier when M.P. No.18 of 2001 was filed before the Labour Court, petitioners herein filed I.A.No.66 of 2002 to decide a preliminary issue as to maintainability of the petition under Section 33-C(2) of the Act, and the said application was allowed. Aggrieved by the same, respondents 3 to 28 herein filed a Writ Petition before this Court being Writ Petition No.1048 of 2003, which was allowed on 18-3-2003 by applying the principles laid down in **D.P.MAHESWARI v. DELHI ADMINISTRATION**[1]. Challenging the same, petitioners herein carried the matter in appeal being W.A.No.843 of 2003, which was dismissed by a Division Bench of this Court on 10-7-2003. Thereafter, petitioners have not raised such an issue before the Labour Court. The Labour Court proceeded on the merits of the case and an

Award was made in favour of the workmen-respondents herein on 27-1-2004. Aggrieved by the same, a Writ Petition in W.P.No.2626 of 2004 was filed and the same is pending in this Court. In that Writ Petition, the question as to maintainability of the petition under Section 33-C(2) of the Act was not raised. Therefore, raising the present issue, in this Writ Petition, does not arise and it is hit by the principles of *res judicata.* Once it is accepted that the 1st petitioner is an industry and respondents 2 to 28 herein are also entitled to maintain a petition under Section 33-C(2) of the Act before the Industrial Tribunal-cum-Labour Court, Visakhapatnam, mere availability of Section 19 or Section 21 of Act 61 of 1976 does not take away the right of respondents 2 to 28 for working out their remedies as available to them. Therefore, the Writ Petition is misconceived and the petitioners are raising the very same issue again and again to test the patience of the respondent-workmen and to get them tired of this litigation. The Writ Petition is devoid of any merit and is liable to be dismissed.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the claim petition filed under Section 33-C(2) of the Act and other material made available on record.

It is not in dispute that Visakhapatnam Cooperative Central Stores (Super Bazar), Visakhapatnam is an industry within the meaning of Section 2(j) of the Act. Admittedly, respondents 3 to 28 are governed by Act 61 of 1976 and a special provision has been made under Section 19 that notwithstanding the availability of the provisions of Payment of Wages Act,1936 for claiming any wages or difference of wages from the employers either before the Authority under the Payment of Wages Act or before any of the fora created under the

scheme evolved by the Government. In this case, no scheme framed by the Government has been brought to the notice of this Court. The whole claim of the petitioners is that there was an agreement dated 5-3-1999 entered into between the Management of Visakhapatnam Cooperative Central Stores (Super Bazar) and the General Secretary and Secretary of Visakhapatnam Labour Union on the enhancement of piece rates to the Hamalies, which was valid upto 31-3-2000. This appears to be an agreement entered into between the Managing Director/Joint Collector/Special Officer of the Stores and the Union. Of course, it enumerates the terms of agreement entered into between the parties. When this was not implemented, respondents 2 to 28 herein have filed M.P.No.18 of 2001 and the present M.P.No.9 of 2005 was filed on 29-12-2004 claiming wages and 6% interest thereon from 1-7-2001 to 31-7-2004. In fact, there was no valid agreement. However, it is the case of respondents 2 to 28 that the agreement dated 5-3-1999 was being followed in all respects and therefore, they have filed the present claim petition.

The question that had arisen for consideration in I.A.No.66 of 2002 in M.P.No.18 of 2001 was for framing a preliminary issue regarding maintainability of the M.P. and to decide the same, viz., whether a petition under Section 33-C(2) of the Act is maintainable before the Labour Court by respondents 3 to 28 herein, who are governed by the provisions of Act 61 of 1976. Though the preliminary issue was answered in favour of the Management, as noticed above, the same was reversed in W.P.No.1048 of 2003, which was upheld by a Division Bench in Writ Appeal No.843 of 2003. Thereafter, this issue was not raised. As such, it cannot be said that the very petition under Section 33-C(2) of the Act, particularly by the workers, who are governed by the provisions of Act 61 of 1976, is not maintainable.

Even if the matter is carried before the Supreme Court, it was only as to desirability of deciding a particular issue as a preliminary issue by the labour Court. Therefore, I am of the opinion that the decision made in M.P.No.18 of 2001 between the same parties cannot be treated as *res judicata* in the present M.P.No.9 of 2005, particularly, when there is no dispute that respondents 3 to 28 are governed by the provisions of Act 61 of 1976.

As noticed above, it is not in dispute that Visakhapatnam Cooperative Central Stores (Super Bazar) Visakhapatnam is an industry within the meaning of Section 2(j) of the Act and respondents 3 to 28 herein can maintain a petition under Section 33-C(2) of the Act, particularly, in view of Section 19 of Act 61 of 1976, which reads as under:

> "**19. Application of Payment of Wages Act to Workers:-** (1) Notwithstanding anything in the Payment of Wages Act,1936 (hereinafter referred to in this section as 'the said Act'), the Government may, by notification direct that all or any of the provisions of the said Act or the Rules made thereunder shall apply to all or any class of unprotected workers employed in any scheduled employment to which this Act applies with the modification that in relation to unprotected workers, employer shall mean where a Board makes payment of wages to any such worker, the Board, and in any other case, the employer, as defined in this Act and on such application of the provisions of the said Act an Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of the enforcement of such provisions of the Act within the local limits of his jurisdiction.
>
> (2) The Government may, only if the Advisory Committee so advises, by a like notification, cancel or vary any notification issued under sub-section (1)."

A plain reading of the above provisions would indicate that apart from the application of the provisions of Payment of Wages Act,1936, respondents 2 to 28 are also entitled to work out remedies as to the payment of wages, difference of wages etc., under any of the

schemes evolved by the Government and machinery provided thereunder.

In **VIJAYAWADA CHAMBERS OF COMMERCE AND INDUSTRY v. GOVERNMENT OF A.P.**[2] His Lordship Justice Jeevan Reddy (as he then was) while examining the scheme of Act 61 of 1976 observed as under:

> "12. It is clear from a perusal of the provisions of the Act that, this Act is made as a measure of workers' welfare and to improve their conditions of service. The idea is to create a statutory Board which shall have a pool of workers registered with it, and a pool of employers also registered with it. Every employer, who has some work to be done by these workers, has to approach the Board, the Board will allot the requisite number of workers to such employer; the rates of payment are fixed; the employer cannot employ any other person than the registered pool workers in any scheduled employment. In the first instance, the Act and the scheme contemplate that the Board shall fix the number of workers for each area and each category, in consultation with the employers. Similarly, it shall also register the employers, and then the scheme will be enforced. The scheme provides for the several conditions of service, the payments to be made, the manner of payment and the other contributions which the employers will have to make towards the workers' welfare. In short, it is a measure conceived to advance socio-economic justice as ordained by the Constitution. Just as the workers are obliged to do the work, which they are allotted, the employers too are obliged to engage the workers allotted to him. It is not open to an employer to say that he will have the same work done through regular employees of his, or workers engaged by him, or through other persons, whether engaged by him or by any other person, like transporter, purchaser, or seller, as the case may be. Such a restriction is indeed necessary for an effective and proper working of the scheme. Evidently, this measure has been brought about to prevent the exploitation of workers, to standardize their wages, and to ensure proper payment. We are told that, mostly the wages are paid not on daily basis, but on piece-rate basis….."

Thus, it is clear that the Scheme of Act 61 of 1976 is to create a statutory body, which shall have a pool of workers and a pool of employers also registered with it. This is a social welfare legislation conceived to advance socio-economic justice as ordained by the

Constitution of India. But, it has to be seen whether there is any employer and employee relationship between the 1st petitioner and respondents 3 to 28 for the purpose of application of provisions of I.D.Act. The employer is defined under Section 2(4) of Act 61 of 1976 as under:

> "(4) 'employer' in relation to any unprotected worker engaged by or through contractor, means the principal employer and in relation to any other unprotected worker, the person who has ultimate control over the affairs of the establishment and includes any other person to whom the affairs of such establishment are entrusted, whether such a person is called an agent, manager or is called by any other name prevailing in the scheduled employment."

The term 'establishment' is defined in Section 2(5) of Act 61 of 1976 as under:

> "(5) 'establishment' means any place or premises including the precincts thereof in which or in any part of which any scheduled employment is being or is ordinarily carried on."

It is also relevant to notice the definitions of 'principal employer', 'unprotected worker' and 'worker' in sub-sections (11),(14) and (16) of Section 2 of the Act, which read as under:

> "(11) 'principal employer' means an employer, who engages unprotected workers by or through a contractor in any scheduled employment.
>
> (14) 'unprotected worker' means a manual worker, who is engaged or to be engaged in any scheduled employment.
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> (16) 'worker' means a person who is engaged or to be engaged directly or through any agency, whether for wages or not, to do manual work in any scheduled employment, and includes any person not employed by any employer or a contractor but working with the permission of or under agreement with, the employer or contractor, but does not include any member of the family of an employer."

From the above provisions, it is seen that 'employer' means the principal employer in relation to any unprotected worker engaged by or

through contractor and in relation to any other unprotected worker, the person who has ultimate control over the affairs of the establishment and includes any other person to whom the affairs of such establishment are entrusted. The 'principal employer' means an employer who engages unprotected workers by or through a contractor in any scheduled employment. 'Unprotected worker' means a manual worker, who is engaged or to be engaged in any scheduled employment. The word 'employer' means an employer in relation to any unprotected worker engaged by or through contractor, the principal employer and in relation to any other unprotected worker, the person who has ultimate control over the affairs of the establishment and includes any other person to whom the affairs of such establishment are entrusted. This all would show that once a particular individual is governed by the provisions of Act 61 of 1976, the principal employer is like the petitioners herein. A combined reading of sub-sections (14) and (16) of Section 2 of Act 61 of 1976 would clearly indicate that unprotected worker means a manual worker, who is engaged or to be engaged in any scheduled employment, but he is also a worker within the meaning of sub-section (16) of Section 2, whether he is engaged for wages or not to do manual work in any scheduled employment and includes any person not employed by any employer or a contractor, but working with the permission of or under agreement with the employer or contractor. This all would go to show that there is a relationship of master and servant between the 1st petitioner and respondents 3 to 28, though the respondents are piece rate workers. However, learned counsel for the petitioners drawn attention of the Court to Section 21 of Act 61 of 1976, which reads as under:

> "**21. Rights and Privileges under other laws not affected in certain cases:-** Nothing in this Act shall affect any rights or privileges, which any unprotected worker employed in any scheduled

> employment is entitled on the date on which this Act comes into force, under any other law, contract, custom or usage applicable to such worker, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act and a scheme made thereunder:
>
> Provided that such worker shall not be entitled to receive any corresponding benefit under the provisions of this Act and the scheme."

and submitted that it must be deemed that the application of I.D.Act is impliedly excluded. In this regard, learned counsel drawn attention of the Court to the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act,1969, which is the source of inspiration for making the present Act i.e. Act 61 of 1976 and drawn attention of the Court to various provisions, particularly Section 17 thereof, to show that the said Act had categorically indicated that I.D.Act is applicable to the disputes that may arise between the parties under the said Act. Whereas, in the present Act, there is no such similar provision made. Therefore, it must be deemed that the Legislature consciously omitted and/or excluded the application of the I.D. Act for the persons governed by Act 61 of 1976. In this regard, learned counsel invoked the doctrine of *casus omissus* and relied upon the decisions in **C.S.T. v. PARSON TOOLS AND PLANTS**[3], **UNION OF INDIA v. DEOKI NANDAN AGGARWAL**[4], **GOBIND SUGAR MILLS LTD. V. STATE OF BIHAR**[5] and **UNION OF INDIA v. RAJIV KUMAR**[6]. Learned counsel further stated that Act 61 of 1976 being a special law, it overrides the general law. Once a special law is made for a set of people, it must be deemed that the other laws have no application to the people governed by special law. Further, when an Authority is provided under a particular Act, the workers governed by that particular Act are entitled to invoke only

those provisions and not the provisions of other legislations. In this regard, learned counsel relied upon a Judgment reported in **STATE OF PUNJAB v. LABOUR COURT, JALANDHAR**[7] wherein it was held that the Payment of Gratuity Act enacts a complete code containing detailed provisions covering all the essential features of a scheme for payment of gratuity and Parliament intended that proceedings for payment of gratuity due under the Payment of Gratuity Act must be taken under that Act and not under any other Act; therefore, the applications filed under Section 33-C(2) of the Act did not lie and the Labour Court has no jurisdiction to entertain and dispose of them. Lastly, he has submitted that, in fact, there was no settlement as such between the parties as defined under Section 2(p) of the I.D.Act. The agreement purported to have been entered into between the parties on 5-3-1999 is not a settlement as defined under Section 2(p) of the Act and it was in force upto 31-3-2000 only and thereafter, there was no agreement whatsoever. Therefore, there is no existing right to respondents 3 to 28 to claim wages as per the said agreement or any other agreement. Concisely, the learned counsel stated that firstly, the agreement was not made as per the provisions of I.D.Act and secondly, there is no existing right to respondents 2 to 28. Therefore, the very maintainability of the claim petition in M.P.No.9 of 2005 under Section 33-C(2) of the Act does not arise. In this regard, the learned relied upon the judgment reported in **CENTRAL BANK OF INDIA v. RAJAGOPALAN**[8], **CENTRAL INLAND WATER TRANSPORT CORPORATION LIMITED v. THE WORKMEN & ANOTHER**[9], **MUNICIPAL CORPORATION OF DELHI v. GANESH RAZAK & ANOTHER**[10] and **KELTRON CONTROLS v. WORKMEN OF KELTRON CONTROLS**[11].

In **C.S.T. v. PARSON TOOLS AND PLANTS** case (3 supra), the Supreme Court held as under:

> "16. If the legislature wilfully, omits to incorporate something of an analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so "would be entrenching upon the preserves of Legislature", the primary function of a court of law being jus dicere and not jus dare."

In **UNION OF INDIA v. DEOKI NANDAN AGGARWAL** (4 supra), it was held by the Apex Court as under:

> "14. We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as "more than five years" and as "more than four years" in the same paragraph for the period subsequent to November 1, 1986. It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities. ……..Modifying and altering the scheme and applying it to others who are not otherwise entitled to under the scheme will not also come under the principle of affirmative action adopted by Courts sometimes in order to avoid discrimination. If we may say so, what the High Court has done in this case is a clear and naked usurpation of legislative power."

In **GOBIND SUGAR MILLS LTD.** case (5 supra), the Supreme Court observed as under:

> "10. While determining the question whether a Statute is a general or a special one, focus must be on the principal subject-

matter coupled with particular perspective with reference to the intendment of the Act. Keeping in mind this basic principle, we will have to examine the provisions of the two Acts to find out whether it is possible to construe harmoniously the provisions of Section 4 of the Finance Act and Section 49 of the Sugarcane Act. If it is not possible then an effort will have to be made to ascertain whether the Legislature had intended to accord the levy on sugarcane a special treatment vis-a-vis the levy of purchase tax on other items, and a further endeavour will have to be made to find out whether Section 49 of the Sugarcane Act excludes the applicability of the levy under Section 4 of the Finance Act. On a perusal of the provisions of the above Acts including the objects of the two Acts, it could be seen that the two enactments in question contemplates levy of purchase tax. While the Finance Act empowers the State to levy all commercial taxes generally, the Sugarcane Act empowers the levy of purchase tax only on sugarcane. In this background, there can be no doubt that the Legislature intended to enact a special enactment for the purpose of levy of purchase tax with reference to sugarcane under the Sugarcane Act to the exclusion of such levy under the Finance Act. Once we come to the conclusion that this is the intention of the legislation then the rule "general provision should yield to special provision" is squarely attracted."

In **UNION OF INDIA v. RAJIV KUMAR** (6 supra), the Apex Court held as under:

"18. It is well settled principle in law that the Court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute or any statutory provision is the determinative factor of legislative intent of policy makers.

21. In D. R. Venkatachalam and others etc. v. Dy. Transport Commissioner and others etc. (AIR 1977 SC 842), it was observed that Courts must avoid the danger of an a priori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

24…….. A *casus omissus* ought not to be created by interpretation, save in some case of strong necessity. Where, however, a *casus omissus* does really occur, either through the inadvertence of the legislature, or on the principle of *quod enim semel aut bis existit praetereunt legislatores*, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute - *Casus omissus et oblivioni*

datus dispositioni communis juris relinquitur; "a *casus omissus*," observed Buller, J. in Jones v. Smart (1 TR 52), "can in no case be supplied by a Court of law, for that would be to make laws."

In **CENTRAL INLAND WATER TRANSPORT CORPORATION** case (9 supra), while interpreting Section 33-C(2) of the Act, the Supreme Court observed as under:

> "12. It is now well-settled that a proceeding under Section 33C (2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workmen from his employer, or if the workman is entitled to any benefit which is capable of being computed in term of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or, otherwise, duly provided for. In Chief Mining Engineer East India Coal Co. Ltd. v. Rameswar, (1968) 1 SCR 140 = (AIR 1968 SC 218) it was reiterated that proceedings under Section 33C (2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by workmen is in such cases in the position of an executing court. It was also reiterated that the right to the benefit which is sought to be computed must be an existing one, that it to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an Industrial workmen and his employer.
>
> 13. In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not; and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination no. (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding under Section 33C (2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope. It is true that in a proceeding under Section 33C (2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely 'incidental' To call determinations (i) and (ii) 'incidental' to an

execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court under Section 33C (2), that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself function - say to an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as 'incidental' to its main business of computation. In such cases determinations (i) and (ii) are not 'incidental' to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal……..”

In **GANESH RAZAK**’s case (10 supra), the Apex Court held as under:

“12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen’s entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court’s power under Section 33-C(2) like that of the Executing Court’s power to interpret the decree for the purpose of its execution.”

In **KELTRON CONTROLS** case (11 supra), the Kerala High Court held as under:

“4…….in order to be a settlement as defined under Section 2(p) of the Industrial Disputes Act, the settlement should have been in Form-H and a copy of the same should have been sent to the Government and to the conciliation officer jointly by the employer and employee and the non-compliance of the statutory requirements would render the above settlement unenforceable by

law……..

At the outset, I am of the opinion that the doctrine of *casus omissus* has no application to the facts of this case. There was no conscious omission or exclusion of the application of the I.D.Act in case of the persons governed by A.P.Act 61 of 1976. Though the learned counsel for the petitioners had referred to several judgments, in this regard, in paragraph-16 of the Judgment in **PARSON TOOLS** case (3 supra), the apex Court held that if the Legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a *casus omissus* in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. This is not one such case. The Act itself has categorically indicated that the petitioner is the principal employer and respondents 3 to 28 are the unprotected workmen within the meaning of Act 61 of 1976.

In **DEOKI NANDAN AGGARWAL'**s case (4 supra) the Apex Court held that it is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. Assuming that there is a defect or an omission in the words used by the legislature, the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be.

In **RAJIV KUMAR**'s case (6 supra), the Supreme Court held that it is a well settled principle of law that the Court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous. A statute is an edict of the legislature. The language

employed in a statute or any statutory provision is the determinative factor of legislative intent of policy makers. The Courts must avoid the danger of an *a priori* determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They (Courts) are not entitled to usurp legislative function under the disguise of interpretation.

From the above, it is clear that when the provisions of the Act are unambiguous, the Courts shall not supply its own meaning and cannot hold that the legislature has consciously or expressly omitted a particular thing. In this case, one thing is clear that Act 61 of 1976 has not expressly omitted the application of the provisions of I.D.Act. I am of the opinion that once there is a relationship of master and servant, as noticed above, respondents 3 to 28 are the workmen within the meaning of I.D.Act.

Learned counsel for the petitioner further stated that the agreement dated 5-3-1999 is not a settlement within the meaning of Section 2(p) of the Act and that could not have been called to be enforced or relied upon as a settlement to show that respondents 3 to 28 have an existing right before the Industrial Court. In this regard, learned counsel relied upon a Judgment reported in **MANAGEMENT, COIMBATORE DISTRICT COOPERATIVE MILK PRODUCERS UNION v. PRESIDING OFFICER**[12], wherein, the Madras High Court held that a petition for subsistence allowance under Section 33-C(2) of the Act is not maintainable, in view of the machinery provided under the Tamil Nadu Payment of Subsistence Allowance Act,1981 and the Rules framed thereunder. In the present Act, i.e. Act 61 of 1976, though a provision is made under Section 19 of Act 61 of 1976 that the Government may, by notification, direct that all or any of the provisions

of the Payment of Wages Act,1936 or the rules made thereunder shall be applied to all or any class of unprotected workers employed in any scheduled employment to which the said Act applies, but no such notification has been brought to the notice of this Court by the learned counsel for the petitioners. May be, no such notification has been issued by the Government. But, it cannot be said that the Payment of Wages Act is not applicable to the case of respondents 3 to 28. However, that does not mean that respondents 3 to 28 could not have invoked the provisions of I.D. Act for the purpose of claiming difference of wages.

Unless the special statute categorically indicates as to certain provisions, it cannot be said that once a special statute is made, the general law is not made applicable. What is contemplated in the special law i.e. Act 61 of 1976 is only regulating the employment of unprotected manual workers engaged in market areas, factories and the like in the State of Andhra Pradesh in connection with loading, packing, weighing, measuring, stitching etc., for ensuring an adequate supply and full and proper utilization of such workers to prevent avoidable unemployment, for securing to such workers better terms and conditions of employment and for matters connected therewith. For this purpose, certain provisions are made in Act 61 of 1976. May be, the Payment of Wages Act is applicable, but that does not mean, I.D. Act is consciously omitted and the doctrine of *casus omissus* is not applicable. Further, a Constitution Bench of the Apex Court in **RAJAGOPALAN**'s case (8 supra), at paragraph-15, has dealt with the scope and applicability of Section 33-C(2) of the Act and held as under:

> "15. The legislative history to which we have just referred clearly indicates that having provided broadly for the investigation and settlement of industrial disputes on the basis of collective bargaining,

> the legislature recognised that individual workmen should be given a speedy remedy to enforce their existing individual rights, and so, inserted S. 33-A in the Act in 1950 and added S. 33-C in 1956. These two provisions illustrate the cases in which individual workmen can enforce their rights without having to take recourse to S. 10(1) of the Act, or without having to depend upon their Union to espouse their cause. Therefore, in construing S. 33-C we have to bear in mind two relevant considerations. The construction should not be so broad as to bring within the scope of S. 33-C cases which would fall under S. 10(1). Where industrial dispute arise between employees action collectively and their employers, they must be adjudicated upon in the manner prescribed by the Act, as for instance by reference under S. 10(1). These disputes cannot be brought within the purview of S. 33C. Similarly, having regard to the fact that the policy of the Legislature in enacting S. 33C is to provide a speedy remedy to the individual workmen to enforce or execute their existing rights, it would not be reasonable to exclude from the scope of this section cases of existing rights which are sought to be implemented by individual workmen. In other words, though in determining the scope of S. 33C we must take care not to exclude cases which legitimately fall within its purview, we must also bear in mind that cases which fall under S. 10(1) of the Act for instance, cannot be brought within the scope of S. 34C."

The claim under Section 33-C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination, which has been assigned to the Labour Court by sub-section (2) of Section 33-C of the Act.

From the above, I am of the opinion that firstly, it cannot be said that I.D. Act is impliedly omitted and the doctrine of *casus omissus* is applicable. The I.D.Act is very much applicable to the case of respondents 3 to 28. It is not impliedly or consciously omitted. There is a master and servant relationship between the petitioners and respondents 3 to 28. There was an agreement. Whether it is a valid one or not and whether it is extended to the later period or not are questions of fact to be decided by the Labour Court. Therefore, I am of

the view that a petition under Section 33-C(2) of the Act is maintainable. No writ of prohibition can be issued in a case of this nature. May be, this is a case where two fora are available and respondents 2 to 28 have invoked one forum i.e., the Labour Court; therefore, it cannot be said that a petition under Section 33-C(2) of the Act is not at all maintainable. In view of the above discussion, the decisions relied upon by the learned counsel for the petitioners have no application to the facts of this case.

For all the above reasons, the Writ Petition is devoid of any merit and is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No order as to costs.

04-10-2007

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[1] AIR 1984 SC 153
[2] 1985 Lab I.C. 1523
[3] 1975(4) SCC 22
[4] 1992 Supp (1) SCC 323
[5] 1999(7) SCC 76
[6] 2003(6) SCC 516
[7] AIR 1979 SC 1981
[8] AIR 1964 SC 743
[9] 1974(4) SCC 696
[10] 1995(1) SCC 235
[11] 2004(2) LLJ 167
[12] 2000(2) LLJ 1436 (Madras)